

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 214 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PATEL JERAM JIVRAJ

Appearance:

MRS. PAREKH, AGP for Petitioner

MR ND NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 24/03/2000

ORAL JUDGEMENT

1. This appeal has arisen on the following facts :

The present respondents of village Kanavadala of
Taluka Visavadar, District Junagadh, purchased the land

bearing Survey No. 51, acre 16 from Girasdar of village Kanavadala Dadubhai Mulubhai vide registered sale deed dated 9.01.1968. According to the case of the respondents, this was a girasdar land and a bid land. Therefore, being bid land, the suit land would not vest in the Government under the provisions of the Section 5 of the Saurashtra Estate Acquisition Act unless necessary notification is issued under Sections 3 and 4 of the said Act, and as such, as per the case of the respondents they became the owners of the suit land. Thereafter, the Mamlatdar, Visavadar taluka, initiated an inquiry under Section 37(2) of the Bombay Land Revenue Code, 1879, being proceeding No. 1 of 1968 against Girasdar Dadubhai Mulubhai and his brothers and an order came to be passed on 5th February, 1968 that the land belongs to the Government and the Girasdars were unauthorised occupants. The present respondents were not parties to that proceeding. After that mamlatdar came to know that in fact the present respondents were in the occupation of the suit land and again he started an inquiry i.e. Summary Eviction Proceedings under Section 61 of the Bombay Land Revenue Code being pesh Kadami Case No. 99/70-71 wherein the present respondents were fined Rs. 100/- and further the present respondents were directed to regularise their possession in respect of the land in dispute within two months, failing which the possession was ordered to be taken away from the present respondents. The present respondents applied before the Collector, Junagadh, without prejudice, to fix the price of the suit land. In pursuance of this, Collector, Junagadh on 18th April, 1973, passed an order to regularise the sale of the suit land and ordered to sell the land to the present respondents at Rs. 2,500/- per acre and the possession of the respondents were allowed to remain with them.

2. After passing of the above order, the present respondents filed a Regular Civil Suit No. 428 of 1973 in the Court of Joint Civil Judge (SD), Junagadh, for declaration that all the above proceedings conducted by the revenue authority in connection with the suit land were void and without jurisdiction and they were not effective and enforceable qua them. The suit, after full fledged trial, came to be decreed against the present appellant - the State of Gujarat on 27th September, 1978 and the present respondents were declared the owner of the suit land. It was further declared that the order passed by the Mamlatdar, Visavadar, in Case No. 1/68 and 99 of 170 and 71 were null and void and not affecting the

rights of the present respondents in respect of the suit land. The State of Gujarat and its agents and officers were restrained by permanent injunction to deprive the present respondents from the possession of the suit land and executing the orders in the above said revenue proceedings. Being aggrieved, the State of Gujarat preferred appeal in the court of District Judge of Junagadh, being Regular Appeal No. 168 of 1979 and the same was dismissed vide order dated 23rd October, 1981 and hence the Second Appeal by the State of Gujarat.

3. This Court in this Appeal has framed the following questions of law as involved in the matter.

1. Whether under the facts and circumstances of the case, Section -C of the Saurashtra State Acquisition Act, 1952, would be applicable even though notification issued by Government under Section 3 and 4 is not valid as the land is within the accepted area as per Section 5?
2. Whether the suit was filed beyond the period of limitation by applying Article 100 of the Limitation Act?
3. Whether suit is barred under section 11 of the Revenue Jurisdiction Act?
4. Whether in the facts and circumstances of the case the Lower Appellate Court has substantially erred in law holding that the suit of the plaintiffs was barred by limitation in view of the Article 100 of the Limitation Act, 1963?
5. Whether in the facts and circumstances of the case, the Lower Appellate Court has substantially erred in law in holding that the enquiry made u/s 37(2) against the predecessors-in-title of the plaintiffs is not binding on the plaintiffs?
6. Whether in the facts and circumstances of the case, the Lower Appellate Court has substantially erred in law in not holding that as the predecessors-in-title of the plaintiffs were not able to make out a

case of ownership with regard to the land, present plaintiffs were estopped from contending otherwise?

7. Whether in the facts and circumstances of the case, the Lower Appellate Court has substantially erred in law in not applying the notification issued u/s. 3 or 4 of the Saurashtra Act to the suit land on the ground that the suit land was bid land.

4. Learned APP Mrs. Parekh was heard on behalf of the Appellant - State of Gujarat and learned Advocate Mr.H.C. Buch on behalf of the Mr. N.D. Nanavati was heard on behalf of the respondents. The respondents are the original plaintiffs in the above said suit.

5. Mainly both the decisions of the trial courts were assailed by the appellant on the grounds that when coming into force of the Saurashtra Land Reforms Act, 1951 and the Saurashtra Estates Acquisition Act, 1952, the Girasdar comes to an end and the land which were held

by the Girasdar came to be vested in the Government and, therefore, the suit land was vested with the Government and the Girasdar of village Kanavadala had no legal authority to transfer the said land to the plaintiffs because he could not have passed any title to the plaintiff in respect of the suit land. It was further argued that as per the Saurashtra Land Reforms Act, 1951, Girasdar i.e. Dadubhai Malubhai was required to obtain occupancy certificate, which could not be obtained by him. Therefore, he could not be said to be the owner of the said land. Several provisions of the Saurashtra Land Reforms Act were also referred. It was also urged that both the courts below were erred in holding that the proceedings taken by the revenue authority were void as against the plaintiffs. It was also urged that the suit was barred by limitation and both the courts below were erred in holding that the suit was within the period of limitation. Alternatively, it was also urged that the suit was hit by delay and latches as the same was filed after two years of passing of the order of Mamlatdar. It was further argued that a Civil Suit was barred under Section 11 of the Revenue Jurisdiction Act. It was argued that the suit was barred as per Sections 51, 55 and 62 of the Saurashtra Land Reforms Act.

6. On the other end, learned Advocate for the respondents has argued that both the decisions of the

lower courts are correct in law and that the Saurashtra Land Reforms Act, 1951 is not applicable to the present

facts. That the Saurashtra Estates Acquisition Act, 1951 clearly reveals that the land in question would vest in the Government only on certain conditions i.e. issuing notification under Sections 3 and 4. It is urged that no such notification has been produced and this being a bid land, does not vest in the government automatically and Girasdar of village Kanavadala had right to sell this property to the present respondents. It is urged that by virtue of registered sale deed, the present respondents have become owners of the land. It was further urged that in proceedings taken by the revenue authorities under Section 37(2) of the Bombay Land Revenue Code, the present respondents were not parties. Those proceedings were taken against Girasdar i.e. seller and, therefore, the order passed under that proceedings cannot bind the present respondents. It was further urged that like wise, the proceedings taken under Section 61 of the Bombay Land Revenue Code against the present respondents also cannot bind them because it was based on earlier proceedings taken against the Girasdar under Section 37(2) of the Bombay Land Revenue Code.

7. Considering the rival contentions and the substantial questions of law as framed by this Court, the crucial question which requires to be decided as to whether the land was vested in Government before it was sold to the present respondents by Girasdar Dadubhai Mulubhai? The Government has taken a stand that as per the provisions of the Saurashtra Land Reforms Act, 1951 and the Saurashtra Estates Acquisition Act, 1952 land

vests in the Government and that the Girasdar had thereafter no title to transfer this land by way of sale to the present respondents. Now perusing the Saurashtra Land Reforms Act, it is clear that this Act was enacted for ultimately putting an end to the Girasdar issue and to regulate the relations with the Girasdar and tenants to enable the tenants to become the occupants of the land held by them and to provide for the payment of compensation to the Girasdar for the extinguishment of their rights. On perusal of the whole Act, there is no provision at all regarding the vesting of land in the Government held by the then Girasdars. The provisions are for regulating the relationships between the Girasdars and the Tenants and, therefore, both the courts

below were correct in holding that this Act had no application at all to the present facts of the case because there was no dispute between the Girasdar and the tenant nor Girasdar had applied for the occupancy certificate.

8. The crucial question which has arisen is in respect of vesting of the suit land in the Government. In fact, the question was required to be decided by Mamlatdar in an inquiry under Section 37(2) after giving an opportunity to the present respondents, but that has not been done. Therefore, now the question is whether land in question is vested in the Government as per the provisions of the Saurashtra Estate Acquisition Act, 1952. The Saurashtra Estate Acquisition Act, 1952 was enacted for acquisition of certain estates of Girasdars

and Barkhalidars of Saurashtra and making provisions for certain matters connected therewith. Section 2 provides definition. Section 2(a) defines "Bid land", which means such land as on the 17th April, 1951 was specifically reserved and was being used by a Girasdar or Barkhalidar for grazing cattle or for cutting grass. Section - 3 provides that the Government may from time to time by a Notification in the Official Gazette, declare that with effect from such date as may be specified in the notification, all the rights, title and interest of Girasdars or Bharkhalidars shall, in respect of any estate or part of an estate comprised in the notification, cease and be vested in the State of Gujarat; and all the incidents of the said returns attaching to any land comprised in such estate or part thereof shall be deemed to have been extinguished. We are not concerned with sub-secs.(2) and (3) of Section 3. Section-4 of the Saurashtra Estate Acquisition Act, 1952 provides for the consequences of abolition of Girasdari or Barkhali in any Estate. It provides that all the incidents of the land shall also vest in the Government. We are not concerned with Section 4(a), 4(b) and 4(c) of the Act. While Section 5 of the Saurashtra Estate Acquisition Act, 1952 provides that notwithstanding anything contained in Section-3 or Section-4, certain lands as enumerated in sub-section (a) to (d) shall not be acquired. Sub-section (a) of Section 5 provides that no bid land which is uncultivable waste, wadas and kodias shall vest in, and be the property of the State of

Gujarat. Now, keeping in view the above mentioned

provision, if we look at the proved facts of the case, it is an admitted fact that the suit land was a bid land and as such firstly it was exempted from acquisition under Section 5 of the Saurashtra Estate Acquisition Act. Not only that, merely by the operation of the Act, Barkhali or Girasdari does not cease, but the Government is required to issue a notification to that effect as per Section 4 of the Act. Even at the first Appellate stage, no such notification was produced by the present appellant State Government on record nor it was proved that a notification as per Section 4 of the Saurashtra Estate Acquisition Act comprising therein the suit land was ever issued. Therefore, the proved facts of the case shows that the suit land was never vested in the Government i.e. present appellant as per the provisions of Saurashtra Estate Acquisition Act. Not only that it is proved by the present respondents i.e. the original plaintiffs that the suit land was bid land i.e. uncultivable land and they after incurring heavy expenditure, improved the land and made it cultivable. As against this, there was no evidence on behalf of the State Government that the suit was cultivable and bid land. Even the abstract principle of onus is made oblivious, then even the evidence of the plaintiffs side only was available that the land in question before they purchased, it was uncultivable. Other wise also, this is a finding of fact by the courts below and cannot be interfered with in this Second Appeal and, therefore, the position emerges that the suit land is neither vested in the State Government as per the provisions of Section-4 of the Saurashtra Estate Acquisition Act and it is proved that it was a bid land before coming into force of the said Act and the exemption granted under Section-5 of the Act is also available to the plaintiffs. The conclusion would be that the suit land never vested in the Government as per the provisions of the Saurashtra Estate Acquisition Act.

9. So far as the revenue proceedings are concerned, it appears that the first proceeding was taken by Mamlatdar, Visavadar, under Section 37(2) of the Bombay Land Revenue Code, being proceedings No.1/68. This proceeding was against Dadubhai Mulubhai and his brother i.e. Girasdars of village Kanavadala. Admittedly, the present respondents were not parties to that suit. The evidence reveals that it was brought to the notice of the Mamlatdar that this land was sold by Girasdars to the present respondents. Even then, no attempt was made to make them as parties in the proceedings and no opportunity of being heard is provided to them. This proceeding, therefore, cannot be said to be binding on

the present respondents. Another pesh Kadami Case No. 99/70-71 was taken by the Mamlatdar against the present respondents under Section 61 of the Bombay Land Revenue Code. This was the proceeding for the summary eviction of the respondents. The law on this point is clear that unless and until a party is given an opportunity to prove the title, the proceeding under Section 61 and the summary eviction are bad in law. Particularly, in this case, the summary eviction proceedings are based on proceeding No. 1/68, which came to be decided in the

absence of the respondents. Therefore, both the courts below rightly held that the order passed by the revenue authorities in absence of the present respondents in the proceeding were void qua the present respondents and the order passed cannot be enforced against the present respondents. Learned APP Mrs. Parekh has argued that in pesh Kadami Case No. 99/70-71, the present respondents had agreed to pay the price of the land as determined by the Collector and, therefore, they are estopped from filing a suit for declaration in the manner the suit has been filed. The trial court has properly held that there cannot be an estoppel against the legal right of the parties. The present respondents had initiated proceedings against the revenue authorities even if they agreed before the Collector to pay the price because they had a legal right to have declaration that those orders cannot be enforced against them.

10. So far as the point of limitation is concerned, it was vehemently urged that Article 100 of the Limitation Act was applicable and the suit was required to be preferred within one year from 30th April 1971 when the order was passed in Case No. 99/70-71. This plea was taken before the lower courts also and the same was rejected on the ground that the Article 100 of the Limitation Act was not applicable but Article 113 was applicable because the orders of the revenue authorities in question were void, ab initio and ultra vires. Both the courts below have held that the orders of the revenue authorities are void, null and ultra vires and,

therefore, had no binding effect on the present respondents. For the above discussion, it is clear that the view taken by the lower courts is correct and once the order is void, the same will be covered under Article 113 of the Limitation Act and not under Article 100 of the Limitation Act because the suit is not filed for setting aside of the order of the revenue authorities but

it is filed for declaration that those orders were not binding and enforceable against the present respondents. The suit is filed within the period of limitation as per Article 113 of the Limitation Act and, therefore, the question of delay and laches would not arise.

11. The above discussion covers the substantial question of law as framed by the Court. This court generally agrees with the reasoning of the trial court and the first appellate court and, therefore, it is not required to deal with each details of the case.

12. In the result, the Appeal fails and the same is dismissed.

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